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**INSTRUCTIONS
FOR EMERGENCY FLOOD ASSISTANCE
UNDER PUBLIC LAW 84-99**

A. Cooperation Agreement and Resolution:

Reference EP 500-1-1 Chapter 4 dated 30 Sep 01; and 33 CFR 203.61 et seq (attached)

1. Fill in Public Sponsor information on the Cooperation Agreement and Resolution. The Corps of Engineers will provide all Exhibits or examples of Exhibits.
2. Inform the Public Sponsor that they must provide to the Government all lands, easements, and rights-of-way required for the emergency work, including levee, borrow, spoil and access rights-of-way.
3. Advise the Public Sponsor that they are **RESPONSIBLE FOR REMOVAL OF TEMPORARY LEVEES**, at no cost to the Corps of Engineers, under Public Law 84-99. The Public Sponsor can seek financial assistance for such levee removal work from other sources.
4. The Public Sponsor's authorized representative (Chief Executive Officer) must **execute** duplicate originals of the Cooperation Agreement. Two representatives of the Public Sponsor's governing board **must sign** the Resolution. The same representative(s) that signed the Resolution cannot sign the Cooperation Agreement. The Resolution provides assurance that the governing board understands the Cooperation Agreement and authorizes Chief Executive Officer (i.e. the Mayor or equivalent) to sign the Cooperation Agreement on its behalf. The Public Sponsor must have statutory authority to execute contracts with the United States. Generally, levee districts, drainage districts, cities and counties have such authority.
5. Reiterate to the Sponsor that they must provide to the Government all lands, easements, and right-of-way for the emergency work, including levee, borrow, spoil and access rights-of-way.
6. FAX (651/290-5255) to Real Estate Division **or** scan and EMAIL (mark.w.nelson@mvp02.usace.army.mil) **or** hand-carry the signed Cooperation Agreement and Resolution to the Emergency Management Officer. Faxed or emailed copies will serve as originals until the originals are received by mail.
 - a. If documents are faxed or emailed, notify the Real Estate Division (651/290-5391) by telephone that the Cooperation Agreement and Resolution have been executed and indicate the method sent.
 - b. If documents are delivered to the Emergency Management Officer, the officer will fax or email the document to Real Estate Division and notify Real Estate Division by phone as to the method sent.
 - c. Mail or express mail the signed Resolution and signed duplicate originals of the Cooperation Agreement to the Real Estate Division.
7. After execution on behalf of the Government, a signed copy of the Cooperation Agreement and Resolution will be returned to the Sponsor.

B. Lands, Easement, Rights-of-way and Relocations:

1. Under the terms of the Cooperation Agreement, the Public Sponsor must provide, without cost to the Federal Government, all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the project.
2. Acquisition of Lands, Easements, and Rights-of-Way:
 - a. All transactions and/or agreements including rights-of-entry or easements will be negotiated and

executed between the Public Sponsor and the landowner pursuant to the requirement of 33 USC 701n.

b. **In the interest of time**, the Public Sponsor may acquire Rights of Entry for Construction from record title owners or persons in apparent possession of lands upon which flood control work will be conducted. Rights-of-Entry can also be used to provide for ingress and egress to work sites. Rights-of-Entry grant a permission from a landowner to enter upon his/her property to perform a specific type of work. Rights-of-Entry are usually granted at no cost because the work is typically of benefit to the landowner. Rights-of-Entry do not convey a property interest. The Public Sponsor may be responsible to reimburse the landowner for property damage that may occur as a result of construction.

c. Acquisition of any interest in real property must comply with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, P.L. 91-646, as amended by Title IV of Public Law 100-17, and the Department of Transportation Regulations found in the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted programs, 49 CFR Part 24. Among other things, P.L. 91-646 **requires** that the Public Sponsor:

- (1) Must offer at least the full-appraised value.
- (2) Pay all reasonable closing costs.
- (3) Provide relocation assistance.

d. Permanent Interest Acquisition

1. If the Sponsor intends to turn temporary flood control structures into permanent structures, permanent easements rather than rights-of-entry will be necessary. This process includes:

- (a) Ownership identification and verification.
- (b) Preparation of legal descriptions.
- (c) A determination of fair market value.

2. Any lands, easements, and rights of entry acquired will be between the Public Sponsor and the landowner. All owners with an interest in the property must sign, including spouses not named in original conveyances.

3. Permanent easements must be recorded in the county records and comply with local requirements.

4. Signatures of individuals for conveyance documents **must be notarized**.

5. Corporate signatures, including farm corporations and partnerships, **require a Resolution** from the Corporation.

d. If a real property interest is donated, the Public Sponsor must obtain a waiver of just compensation from the landowner. Many landowners will donate the right-of-way required for the emergency as consideration for the benefit to their property.

NOTE: Acquisition forms available upon request from the Real Estate Division POC or from our web site <http://www.mvp.usace.army.mil/organization/re/>.

TITLE 33--NAVIGATION AND NAVIGABLE WATERS
CHAPTER II--CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY PART

203--EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES,
NATURAL DISASTER PROCEDURES

Subpart C--Emergency Operations

Sec. 203.31 Authorities.

Source: 54 FR 3028, Jan. 23, 1989, unless otherwise noted.

This authority applies to flood response and post flood response activities. Flood response activities include flood fighting, rescue operations, and protection of Corps constructed hurricane and shore protection projects. Flood fighting measures are applicable to any flood control structure (Federal, state, local, and private) where assistance is supplemental to state and local efforts. Corps assistance is not appropriate to protect flood control structures constructed and/or maintained by other Federal agencies where those agencies have emergency authority.

(a) Flood response. Corps assistance in support of other Federal agencies or state and local interests may include the following: technical advice and assistance; loaning of flood fight supplies, e.g., sandbags, polyethylene sheeting, lumber, stone; loaning of Corps-owned equipment; hiring of equipment and operators for flood fight operations; emergency contracting.

(b) Post flood response. Corps divisions/districts are provided authority to furnish assistance for a period not to exceed 10 days in response to a Governor's request. This assistance may include the following: Provision of technical advice and assistance; clearing of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; removal of minimum debris necessary to reopen critical transportation routes; temporary construction to restore critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or public property.

Sec. 203.32 Policy.

During or immediately following a flood or coastal storm, emergency operations may be undertaken by the Corps to supplement state and local activities. Corps assistance is limited to the preservation of life and improved property, i.e., residential/commercial developments and public facilities/services. Direct assistance to individual homeowners or businesses is not permitted. Assistance will be temporary, meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Office of Emergency Services or equivalent. Reimbursement of state or local emergency costs is not authorized. The assurances required for the provision of Corps assistance apply only to the work performed under Pub. L. 84-99 and will not prevent state or local governments from receiving other Federal assistance.

(a) Flood response. Request for Corps assistance will be in writing from the Governor or his/her authorized representative. When time does not permit a written request, a verbal request from either a responsible state or local official will be accepted followed by a written confirmation from the state. Corps assistance may include operational control of flood response activities, if requested by the responsible state official. However, legal responsibility remains with state and local officials. Corps assistance will be terminated when the floodwaters recede below bankfull. Removal of ice jams is a local responsibility; however, Corps technical advice and assistance, as well as assistance with flood fight operations can be provided to supplement state and local efforts. The Corps will normally not perform ice jam blasting operations.

(b) Post flood response. A written request from the Governor to the district or operating division commander is required to receive Corps assistance. Corps assistance will be limited to major flood or coastal storm disasters resulting in life threatening situations. The Governor's request should include: verification that the Federal Emergency Management Agency (FEMA) has been requested to initiate Preliminary Damage Assessments (PDA); statement that assistance required is beyond the State's capability; specific damage locations; extent of Corps assistance required to supplement state and local efforts. The Governor's request should be transmitted concurrently with the request to FEMA for PDA. Corps assistance is limited to 10 days following receipt of the Governor's written request or on assumption of activities by State and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period or trigger a new 10-day period. The Corps will deny a Governor's request if it is received subsequent to a Presidential declaration or denial. Shoreline or beach erosion damage reduction/prevention will not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) Loan or issue of supplies and equipment. Issuance of Government owned equipment or materials to non-Federal interests is authorized only in actual emergencies. Providing Government supplies is authorized only after local resources have been fully committed. Equipment which is loaned should be returned to the Corps immediately after the flood operation ceases in a fully maintained condition. Expendable supplies such as sandbags will be replaced in kind or paid for by local interests to the extent considered feasible and practicable by the division or district commander. All unused expendable supplies will be returned to the Corps when the operation is terminated.

**COOPERATION AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
and**

**for
EMERGENCY FLOOD ASSISTANCE (33 CFR 203.31)**

THIS AGREEMENT, entered into by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") acting by and through the District Engineer, St. Paul District, U.S. Army Corps of Engineers, and the _____, (hereinafter referred to as the "Public Sponsor"), acting by and through _____.

TITLE OF PERSON SIGNING THIS AGREEMENT

WITNESSETH THAT:

WHEREAS, 33 USC 701n authorizes the Chief of Engineers to flood fight and perform rescue operations; and

WHEREAS, the Public Sponsor has requested assistance under 33 USC 701n, and the Public Sponsor qualifies for such assistance in accordance with the established policies of the U.S. Army Corps of Engineers; and

WHEREAS, the Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate with the terms of this agreement;

NOW, THEREFORE, the parties agree as follows:

1. The Government will perform the work described in its scope of work (Exhibit A) that is made a part of this agreement.

2. Pursuant to 33 CFR 203.82 The Public Sponsor will:

a. Provide without cost to the Government all lands, easements, rights-of-ways, relocations, and borrow and dredged or excavated material disposal areas necessary for the work. All land acquisition shall comply with Public Law 91-646, as amended by Title IV of Public Law 100-17 and 49 CFR Part 24.

b. Hold and save the Government free from damages arising from construction, operation, maintenance, repair, replacement, and rehabilitation of the work, except damages due to the fault or negligence of the Government or its contractors.

c. Operate, maintain, repair, replace, and rehabilitate the completed work in a manner satisfactory to the Government.

d. Remove, at no cost to the Corps of Engineers under Public Law 84-99, all temporary work constructed by the Government when the emergency has passed as determined by the Government.

3. The Public Sponsor does hereby agree and pledge that it will truly and faithfully perform the following conditions, to wit:

a. If the Government provides sandbags to the Public Sponsor for use in flood fighting activities, the Public Sponsor will use these sandbags in accordance with Government standards and guidelines. The Public Sponsor may want to consider building backup levees where sandbag structures are used in the construction of closures, main levees, or other flood protection structures.

b. All Work completed will be restricted from the designated floodway, which both parties of this agreement will determine on the ground prior to the construction of any flood protection works.

c. The Public Sponsor will be held accountable for possession, maintenance and return of all Government equipment provided for use in flood fighting activities. Government equipment damaged, destroyed or lost while in the Public Sponsor's possession will be repaired or restored by the Public Sponsor at the Public

Sponsor's expense.

d. The Public Sponsor has established a flood response organization and designated an Incident Commander. The Public Sponsor's Incident Commander is identified at the end of this agreement.

e. The Public Sponsor will operate and maintain the emergency construction works for the duration of the flood emergency.

f. The Public Sponsor will provide common labor.

g. The Public Sponsor will provide, as required under the applicable provisions of Public Law 91-646, relocation assistance payments to those eligible because of dislocation of persons or property from their dwellings, farms or businesses due to the acquisition of rights-of-way for the emergency flood construction work.

h. The Public Sponsor will remove, after the flood emergency, without cost to the U.S. Army Corps of Engineers, any temporary emergency works constructed for the flood emergency.

4. ATTACHMENTS:

a. Exhibit A - Government Scope of Work.

b. Exhibit B – Resolution (certifies the person executing this document on behalf of the Public Sponsor has the authority to sign).

The Public Sponsor, as part of the aforesaid consideration, does hereby release and forever discharge the Government, its officers, employees, agents and assigns, in the prosecution of the proposed emergency flood control work herein contemplated, from all claims, demands, actions and causes of action whatsoever, which may arise by reason of, or in any manner have grown out of or alleged to have grown out of, the construction of the said flood control work as herein contemplated.

The Public Sponsor by execution of this document, assures that they have obtained or will obtain the necessary lands and right-of-way needed for the purpose of performing the emergency flood control work hereinabove described and hereby grants PERMISSION to the Government, its officers, employees, agents, and assigns and the Government contractors, their officers, employees, agents and assigns to enter upon Public Sponsor's lands and rights-of-way for the purpose of performing the emergency flood control work hereinabove described.

It is hereby certified that the undersigned have the legal authority to execute the above agreement, that the assistance herein requested is beyond the capability of local authorities, and that every possible effort shall continue to be made at the local level to accomplish effective protection from the flood.

Public Sponsor Incident Commander:

Name: _____

Phone: _____

Office Address: _____

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

THE DEPARTMENT OF THE ARMY

THE [NAME OF PUBLIC SPONSOR]

DATE: ____/____/20____

DATE: ____/____/20____

BY: _____

Robert L. Ball
Colonel, Corps of Engineers
District Engineer

ADDRESS: 190 5th Street East
St. Paul, Minnesota 55101

BY: _____

[TYPED NAME]
[TITLE IN FULL]
[TITLE IN FULL]

ADDRESS:

RESOLUTION OF THE

(BOARD OF COUNTY COMMISSIONERS or CITY or TRIBAL COUNCIL or VILLAGE COUNCIL)

OF

(SPONSOR)

REQUEST FOR FLOOD EMERGENCY ASSISTANCE

WHEREAS, Public Law 84-99, as amended, (33 U.S. Code, Section 701n) provides a means of preparing for and combating damage by floods and flood waters; and

WHEREAS, (name of Governmental body) has exhausted all resources available to it for flood fighting and rescue operations; and

WHEREAS, on the date of this Resolution, flood fighting is needed and assistance required for the purpose of rescue operations;

NOW, THEREFORE, BE IT RESOLVED that the U.S. Army Corps of Engineers be, and is hereby, requested to furnish assistance in flood fighting and rescue operations.

BE IT FURTHER RESOLVED that in consideration of such assistance the above-named Governmental body agrees to:

- a. Provide to the United States all lands, easements and rights-of-way for the emergency work, including, but not limited to, levee, borrow, spoil and access rights-of-way.
- b. Hold and Save the United States free from all claims for damages attributable to the construction works except for damages due to the fault or negligence of the United States or its Contractors.
- c. Operate and maintain the emergency construction works for the duration of the flood emergency.
- d. Provide common labor.
- e. Provide as required under the applicable provisions of Public Law 91-646, relocation assistance payments to those eligible because of dislocation of persons or property from their dwellings, farms or businesses due to the acquisition of rights-of-way for the emergency flood construction work.
- f. Remove, after the flood emergency, without cost to the U.S. Army Corps of Engineers, any temporary emergency works constructed for the flood emergency.

BE IT FURTHER RESOLVED that the (Chairman of the County Board of _____) or (Mayor of the City of _____) or (Head/Chief/Chairman of _____ Council) be authorized to enter into agreements with the Corps of Engineers as to the means of supplementing the local flood emergency preparation and flood fighting and rescue operations.

Dated: _____ Member

_____ Member